IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 399 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKOREDAS MAGANDAS BHAVANI

Versus

FOOD INSPECTOR

Appearance:

MS SAROJ J PARMAR for Petitioner

MR BY MANKAD, Learned APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 13/12/2000

ORAL JUDGEMENT

Original Accused of Criminal Case No.1612 of 1988 which was pending on the file of Second Joint Civil Judge (J.D.) and Judicial Magistrate (First Class), Gandhinagar (who will be referred to as the Learned Magistrate) has by preferring this Criminal Revision Application under section 397 of Criminal Procedure Code, 1973 challenged

the correctness, legality and propriety of judgment Ex.39 dated 25th May, 2000 rendered by the learned Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar in Criminal Appeal No.1 of 1996 (new number) (No.9 of 1992 old number). The revision petitioner was accused while revision opponent NO.1 was the complainant in the aforesaid Criminal Case No.1622 of 1988 and, therefore, for the brevity the parties will be referred to as the complainant and the accused respectively at the appropriate places.

2. The facts giving rises to this revision application in a nutshell are as under :-

On or about 7th October, 1987, the complainant who is a Food Inspector visited the shop of accused situated at Thakorvas in village Moti Shiholi. The accused was present, when the complainant paid a visit to the shop of accused. The complainant called one Babuji Takhaji to act as panch. The complainant purchased 450 Grams of Chillies Powder for the purpose of analysis from accused. He prepared three parts of the sample of Chillies Powder so purchased by following due procedure prescribed under the Prevention of Food Adulteration Act, 1954 (for short "the Act") and the rules made thereunder. Thereafter, one of the parts of the sample of Chillies Powder was sent to Public Analyst, Rajkot for analysis and the Public Analyst issued his report dated 12th November, 1987. As per that report the percentage of non volatile ether extract was found to be 14.80%. The Public Analyst has observed that this percentage should be 12% minimum. He has further stated in his report that pink coloured oil soluble coal tar dye was detected and, therefore, he opined that the sample of Chillies Powder was adulterated. Thereafter, the complainant sought a sanction under Section 20 of the Act to prosecute the accused, and thereafter, he lodged his complaint in the Court of the learned Magistrate at Gandhinagar. The learned Magistrate tried the accused for offences punishable under section 16(1) of the Act for contravention of section 7(i) of the Act. At the end of the trial, the learned Magistrate, by rendering her judgment dated 7th July, 1992, rendered in Criminal Case No.1612 of 1988 convicted the accused for the said offence and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-; and in default to pay the said fine, to undergo simple imprisonment for one month.

3. Being aggrieved against and dissatisfied with the said judgment of conviction and sentence, rendered by the

learned Magistrate the accused preferred Criminal Appeal No.9 of 1992 (old number) to the Court of the learned Additional Sessions Judge, Ahmedabad (Rural), at Mirzapur, Ahmedabad. Thereafter on establishment of the Court of learned Additional Sessions Judge, Gandhinagar a new number as Criminal Appeal No.1 of 1996 was given to the said Appeal. The learned Additional Sessions Judge, Gandhinagar (who will be referred to hereinafter as the learned Appellate Judge). After perusal of the record and proceedings of the case, and on appreciating the evidence led by the prosecution, and after hearing the arguments of the learned advocates for both the parties, rendered his judgment Ex.39 on 25th May, 2000, by which the appeal preferred by accused was dismissed.

4. Being aggrieved against and dissatisfied with the said judgment dated 25th May,2000 rendered by the learned Appellate Judge in Criminal Appeal NO.9 of 1992, the accused has preferred this present Criminal Revision Application.

5. When this appeal was placed before this Court at admission stage, after hearing the learned advocate for the revision petitioner, this Court passed the following order on 5th December, 2000.

> "Rule qua sentence only. Bail granted earlier to continue till then. Rule returnable on 12-12-2000."

6. On 12th December, 2000, this Appeal is taken up for hearing. I have heard Ms.Saroj Parmar, the learned advocate for the revision petitioner and Mr.B. Y. Mankad, the learned APP for the State i.e. revision opponent No.2. As this Criminal Revision Application has been admitted only on the point of sentence only, Ms.Saroj Parmar, the learned advocate for the revision petitioner has argued that the accused has already undergone imprisonment for 5 (five) months and 20 (twenty) days and further that as he has paid the fine imposed by the trial Court, looking to age of the accused and the fact that he is carrying on business in small village, a lenient view be taken on the point of sentence. She has tried to substantiate her arguments by showing that there is no percentage of coal tar detected in the sample. She has also argued that Public Analyst has not stated that there was particular percentage of coal tar dye in the sample of Chillies Powder.

7. Unless and until, presence of percentage of particular article is there in the food article, that

article cannot be detected. Here in this case, the Public Analyst has detected pink colour soluble dye. Mr.B. Y. Mankad, the learned APP for the respondent No.2 has argued that in view of provisions of Rule-29 of the Prevention of Food Adulteration Rules, 1955 (for short "the Rules"), there is complete prohibition/ban for the use of permitted synthetic food colours. There are certain exceptions for the use of such colours. That exceptions are stated in Clauses (a) to (g) of Rule-29 of the Rules. There is no mention with regard to Chillies Powder in any of the said Clauses (a) to (g) of Rule-29 of the Rules. Under the circumstances, when there is a complete prohibition/ban for using colours much less the synthetic food colours in Chillies Powder, and when there is no exception made in Rule-29 of the Rules, then the article can certainly be said to be an adulterated article, and therefore, it is not necessary to note as to what was the percentage of coal tar dye detected in the sample of Chillies Powder.

8. Ms.Saroj Parmar, learned advocate for the petitioner has argued that accused has undergone a sentence of 5 months and 20 days. As per section 16 of the Act minimum sentence of six months is prescribed for such offences and it can be extended upto 3 years and a fine. Here in this case, the learned Magistrate has inflicted the sentence of only one year. The nature of adulteration falls under section 2(j) of the Act because there was a percentage of coal tar dye which causes cancer to the human beings. That coal tar dye is injurious to the health and, therefore, when adulteration was within the meaning of section 2(i)(a)(b) of the Act, no sentence can be inflicted for less than 3 months, but for that lesser sentence a special reason is required to be mentioned in the judgment. Ms.Saroj Parmar, learned advocate for the petitioner was not able to state any adequate and special reason for inflicting sentence less than six months.

9. Looking to the nature of article of adulterant found in the sample of Chillies Powder, and the nature of adulteration, this Court is of the view that no lenient view should be taken, because this type of adulteration affects adversely to the health of the public who use this Chillies Powder. In case of STATE v. KUTUBUDDIN ISAFALI KUSHALGADHWALA, reported in 1980 (2) GLR 167, it is held that Rule-29 of the Prevention of Food Adulteration Rules provides that use of permitted coal tar dyes in or upon any food other than those enumerated in that rule, is prohibited. No coal tar dye of whatever colour is permitted to be added in Chillies Powder. By

Rule-29, even synthetic food colours are totally prohibited for food articles with respect to items which we do not find a place, in the list of items set out Clauses (a) to (g) of Rule-29. Chillies Powder is not one of the items falling in any of the Clauses (a) to (g) of Rule-29 and, therefore, no coal tar dye irrespective of colour to which it may belong, is permitted to be added in Chillies Powder.

10. Looking to the facts and circumstances of the case, and the nature of article used in the Chillies Powder, this Court is of the view that the sentence inflicted by the learned Magistrate is quite adequate and sufficient. In such type of cases, no lenient view can be taken, and therefore, this Criminal Revision Application is devoid of merits, and the same is required to be dismissed.

11. In view of what is stated hereinabove, Criminal Revision Application stands dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

12. The revision-petitioner/accused is directed to surrender himself before the trial Court to serve out the sentence inflicted as per the judgment rendered by the learned Appellate Judge within two months from the date of receipt of the writ of this Court. Record and Proceedings of the case, if are called for from the trial Court, be sent back forthwith.

(H. H. MEHTA, J.)

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(vrpanchal)*